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No. 50.

(OCTOBER TERM, 1899—No. 286.)

COMPAGNIE FRANÇAISE DE NAVIGATION À VAPEUR, - - Plaintiff in Error,

VERSUS

THE STATE BOARD OF HEALTH OF LOUISIANA, et als. - Defendants in Error.

In Error to the Supreme Court of Louisiana.

Brief in behalf of the Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 286.

COMPAGNIE FRANÇAISE DE NAVIGATION À VAPEUR, PLAINTIFF IN ERROR,

versus

THE STATE BOARD OF HEALTH OF LOUISIANA, EDMOND SOUCHON, HAMPDEN S. LEWIS AND CHARLES A. GAUDET, DEFENDANTS IN ERROR.

In Error to the Supreme Court of the State of Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

I.

STATEMENT OF THE CASE.

This case comes into this Court upon a Writ of Error to the Supreme Court of Louisiana. The writ is sued out to reverse a judgment of that court affirming a judgment of the Civil District Court for the Parish of Orleans, which maintained an exception of no cause of action filed by the defendants in error to the original and supplemental petitions of the plaintiff below, plaintiff in error here, and dismissed its suit.

An exception of no cause of action, under the practice prevailing in Louisiana, is the equivalent of a general demurrer. **It is not disputed that such an exception admits as true all allegations of fact which are well pleaded in the petition.**

The original petition of the plaintiff in error tendered the following case:

1. The plaintiff in error is a corporation existing under the laws of the French Republic, is a citizen of said Republic, and is domiciled at Marseilles. It is the owner of a large number of steamships, and especially of the Steamship "Britannia," and is engaged in the business of transporting freight and passengers for hire from various Mediterranean ports to various ports in the United States, and more particularly to the Port of New Orleans.

2. The defendant in error, the State Board of Health, is a body corporate created by Act No. 192 of the General Assembly of the State of Louisiana of the year 1898. Said Board is composed of seven members, and is charged by the provisions of said Act with the protection and preservation of the public health, the duty of promulgating a sanitary code for the State, the regulation of infectious and contagious diseases therein, and is vested with power to prescribe a land and maritime quarantine against places infected with such diseases. The Board is given power **to sue and capacity to be sued**, and is domiciled in the City of New Orleans.

3. The other defendants in error are members of said Board, citizens of the State of Louisiana, and residents of the City of New Orleans.

4. In the early part of September, 1898, the plaintiff in

error caused its Steamship "Britannia" to be cleared from the ports of Palermo, Sicily, and Marseilles, France, for the Port of New Orleans. Said Steamship carried one hundred tons (100) of general merchandise and 408 passengers. Both freight and passengers were destined for the Port of New Orleans. Some of the passengers were citizens of the United States returning to their homes, and others were subjects of the King of Italy intending to avail themselves of the immigration laws of the United States, and to enter and settle in the State of Louisiana and adjoining States.

5. The said passengers were in all respects and at that time free from infectious and contagious diseases, and were so free on the arrival of the said Steamship, on the 29th of September, 1898, at the Quarantine Station established by the defendant Board on the Mississippi River below the City of New Orleans. On that day, in accordance with the rules of said Board, the said "Britannia" was regularly inspected and her freight and passengers examined by the officers of the Board, and the same being found entirely free from disease of any kind, the said officers accordingly issued to the said vessel a clean bill of health.

6. Notwithstanding the issue of this clean bill of health, and although under the rules established by the defendant Board the "Britannia" should have been permitted at once to proceed to the Port of New Orleans and there discharge, and although her cargo and passengers continued free of disease, the said Board, on the 29th of September, 1898, at a special meeting convened at the City of New Orleans, whereat the other defendants in error, to-wit: Souchon, Gaudet and Lewis, were present and voted affirmatively, passed a resolution prohibiting the said vessel from coming

into the Port of New Orleans. A copy of this resolution was sent by the said Board to the agents of the plaintiff in error at New Orleans. The resolution is as follows:

"September 29th, 1898.

"Resolution adopted in special session by the Louisiana State Board of Health, September 29th, 1898:

"Resolved, That hereafter, in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers or others shall be allowed to enter said town, city or parish so long as said quarantine shall exist, and that the President of the Board shall enforce this resolution.

G. FARRAR PATTON, M. D., Sec'ty."

The letter accompanying the foregoing resolution is as follows:

"Louisiana State Board of Health,
September 29th, 1898.

"Messrs. Jas. Sawers & Son,
Agents S. S. Britannia, New Orleans, La.

"Gentlemen: Referring to the detention of the S. S. 'Britannia' at the Mississippi River Quarantine Station, with 408 Italian immigrants on board, I have to inform you that under the provisions of the new State Board of Health law, Section 8, of which I enclose a marked copy, this Board has adopted a resolution forbidding the landing of any body of people in any town, city or parish in quarantine. Under this resolution the immigrants now on board the 'Britannia' cannot be landed in any of the following parishes of Louisiana, namely: Orleans, St. Bernard, Jefferson (right bank), St. Tammany, Plaquemines, St. Charles, or St. John. You will therefore govern yourselves accordingly.

Respectfully,
EDMOND SOUCHON, M. D.,
President Louisiana State Board of Health."

Subsequent to the foregoing resolution and notice, the President of the defendant Board further notified the agents of the plaintiff in error at New Orleans that if any attempt

was made to land the "Britannia's" passengers at any place contiguous to the port of New Orleans, in the State of Louisiana, not then quarantined, that quarantine would at once be established and enforced at such place. The effect of this action was to prevent the vessel from landing her cargo or discharging her passengers anywhere in the State of Louisiana.

7. It is alleged by the petition that the resolution aforesaid, while purporting on its face to be general in character, was, in fact, specially directed toward preventing and prohibiting the landing of the cargo and passengers of the "Britannia," inasmuch as both prior and subsequent to the passage of the said resolution, the defendants in error had permitted large bodies of people coming from the same port in Sicily, to wit: Palermo, via the port of New York, to be brought into the City of New Orleans by rail, and that an illegal and arbitrary discrimination had been made to the prejudice of the plaintiff in error.

8. It was further alleged that the defendants in error based their asserted right to thus exclude from the State of Louisiana persons in good health coming from non-infected ports upon the following portion of Section 8 of Act 192 of 1898, to wit:

"The State Board of Health, in its discretion, may prohibit the introduction into any infected portion of the State of persons acclimated, unacclimated or said to be immune, when, in its judgment, the introduction of such persons would add to or increase the prevalence of the disease."

9. The foregoing language was alleged by the petition to confer no such power on the defendant Board, as was asserted; and if the language cited did purport to confer such a power, then the plaintiff in error averred that the same

was in violation of the Constitution of the United States, and especially of Article 1, paragraph 8, Section 3 thereof, conferring upon Congress the exclusive power to regulate commerce with foreign nations and among the several States.

10. The defendants in error were alleged to be joint tort-feasors and solidarily liable in the sum of $2,500, the amount of damages caused by their conduct up to the date of the filing of the petition.

The plaintiff in error reserved its right to amend and claim such further damages as might be found to have been sustained by the illegal and arbitrary conduct of the defendant. The petition further prayed for an injunction prohibiting further interference with the landing of the Britannia's cargo and the discharge of her passengers at the port of New Orleans.

In order to save expense, the proceedings for injunction are by stipulation omitted from this record. It suffices to say that the injunction was refused on the face of the papers.

11. After this denial, the plaintiff in error filed its supplemental petition. It reiterated the allegations of its original petition. It then set forth compliance by the detained vessel with all the laws of the United States regulating commerce with foreign nations, regulating quarantine, and immigration into the United States; the fact that the passengers of said vessel came from ports which were not infected, and were not pretended to be infected with any infectious or contagious disease; and the further fact that the vessel had sailed prior to the declaration by the Board of the existence of an infectious disease in the City of New

Orleans, and that said vessel had no notice of the intended action of the defendant Board. It further alleged that the illegal and arbitrary action of the said defendants in error in preventing and prohibiting the landing of the Britannia in the State of Louisiana, compelled the plaintiff in error to send her for the discharge of her passengers to the port of Pensacola, which was the nearest available port, and thence to send her back to New Orleans for the discharge of her cargo. There was a total delay of over three weeks, and a resulting damage of something over eleven thousand dollars, the particulars of which are specified in the petition.

The conduct of the defendants in error is alleged to be in violation of various specified laws of the United States and rules and regulations made in pursuance thereof relating to immigration from foreign countries into the ports of the United States; and to be in violation of the existing treaties between the United States on the one hand, and the Kingdom of Italy and the Republic of France on the other.

12. As already stated, the defendants excepted that the petition and the documents annexed to and made part thereof, disclosed no cause of action, and the Civil District Court so held. The plaintiff in error thereupon appealed to the Supreme Court of Louisiana, and there assigned as error the denial by the lower court of its rights under the following constitutional provisions, treaties and statutes, to-wit:

(a) Section 3 of paragraph 8 of Article 1 of the Constitution of the United States.

(*b*) Section 1 of the 14th Article of Amendment to the Constitution of the United States.

(*c*) The treaties between the United States and France and Italy.

(*d*) The Acts of Congress of August 3, 1882; June 26, 1884; February 26, 1885; March 3, 1891; February 26, 1885; February 23, 1887; March 3, 1875; all regulating foreign immigration into the United States. (Transcript, pages 10 and 11).

The judgment of the lower court having in all respects been affirmed by the Supreme Court of Louisiana, and our federal rights having been denied (pp. 22-25), this Writ of Error was taken.

II.

In this Court the plaintiff in error has filed the following:

ASSIGNMENT OF ERRORS.

(1)

The Supreme Court of Louisiana erred in affirming the judgment of the Civil District Court for the Parish of Orleans in this cause.

(2)

The Supreme Court of Louisiana erred in sustaining the peremptory exception of the defendants in this cause.

(3)

The Supreme Court of Louisiana erred in holding that the plaintiff's suit was properly dismissed by the Civil District Court for the Parish of Orleans.

(4)

The Supreme Court of Louisiana erred in holding that the Act of the General Assembly of Louisiana, No. 192 of

1898, or any portion thereof, and especially Section 8 of said act, conferred upon the defendant, the State Board of Health, the authority to exclude or interfere with legitimate foreign commerce as claimed by the defendants and as done by them as set forth in the pleadings in this cause.

(5)

Even if Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, attempted to confer upon the said defendant, the State Board of Health, authority to exclude or interfere with legitimate foreign commerce in the manner stated in the petition and supplemental petition of the plaintiffs in this cause, and admitted by the peremptory exception of the defendants herein, the Supreme Court of Louisiana erred in holding that Section 8 of said Act 192 of 1898, as construed and applied by the defendants in the premises, was not repugnant to the 8th Section of the 1st Article of the Constitution of the United States, conferring on Congress the power to regulate commerce with foreign nations.

(6)

That even if Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, did attempt to confer upon the defendant, the State Board of Health, the right and authority to exclude or interfere with the subjects and citizens of foreign governments seeking to enter the State of Louisiana in the manner conceded by the pleadings in this cause, the Supreme Court of Louisiana erred in holding that said Section 8 of said Act No. 192 of 1898, as construed and applied by the defendants, was not in conflict with the treaties between the United States, on the one part, and the Repub-

lic of France and the Kingdom of Italy, on the other parts, guaranteeing certain rights, privileges and immunities to the subjects and citizens of said foreign countries, the said treaties being as follows: The treaty with Italy of February 26, 1871, proclaimed November 23d, 1871, Article 1, and the treaty with France of April 30, 1803, Article 8.

(7)

The Supreme Court of Louisiana erred in sustaining the peremptory exception of defendants and in dismissing the suit of plaintiffs in this, that Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, as relied upon and applied by the defendants and as construed and applied by the Court, contravenes the 14th Article of Amendment of the Constitution of the United States, Section 1, by depriving the plaintiff of its liberty and property without due process of law and denying to it the equal protection of the laws.

(8)

The Supreme Court of Louisiana erred in holding that Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, relied upon by the defendants and applied by them, and as construed and applied by the Court, did not contravene the Acts of the Congress of the United States regulating foreign immigration into the United States, which Acts are as follows:

March 3, 1875, Chap. 141.
August 3, 1882, Chap. 376.
June 26, 1884, Chap. 121.
February 26, 1885, Chap. 164.
March 23, 1887, Chap. 120.
March 3, 1891, Chap. 551.

And for these and other errors apparent on the face of the record, plaintiff in error prays that the final judgment of the Supreme Court of Louisiana in this cause be reversed and this cause remanded to that Court, with instructions to reverse the judgment of the Court of first instance, and to remand the cause to that Court to be further proceeded with according to law, and for such other and further judgment and decree as may be proper in the premises.

III.

These assignments will be grouped and discussed in this brief under the following points:

STATEMENT OF POINTS.

First. The statute drawn in question, on its face and as construed and applied, is void for the reason that it is in violation of Article I, Section 3, Paragraph 8, of the Constitution of the United States, inasmuch as it vests authority in the State Board of Health, in its discretion, to interfere with, or prohibit interstate and foreign commerce.

Second. The statute is void for inasmuch as it is in conflict with Section 1 of the fourteenth Article of Amendment to the Constitution of the United States, in that it deprives the plaintiff of its liberty and property without due process of law, and denies to it the equal protection of the law.

Third. The statute, as construed and applied, is void for the reason that it is in conflict with treaties between the United States on the one part and the Kingdom of Italy and the Republic of France on the other parts, guaranteeing certain rights, privileges and immunities to the subjects and citizens of said countries.

Fourth. The statute, as construed and applied, is void, because it is in conflict with the laws of the United States relating to foreign immigration into the United States.

IV.

FIRST POINT.

The statute drawn in question, on its face and as constuted and applied, is void for the reason that it is in conflict with Article 1, Section 3, Paragraph 8, of the Constitution of the United States, inasmuch as it vests the State Board of Health, in its discretion, with power to interfere with, or prohibit interstate and foreign commerce.

Cases of this character have so often been before this Court, that the general rules by which the case at bar is to be determined may be said to be definitely fixed and settled. It suffices, then, in our opinion, to briefly summarize them. We accordingly submit that the following propositions are well settled by the decisions of this Court:

First. The power to regulate interstate and foreign commerce is exclusively vested in Congress, and this power extends moreover to all necessary instruments of commerce.

Second. By commerce is meant not merely barter and traffic in merchandise, but also exchange of commodities, navigation, the transportation of passengers and the intercourse of people with each other.

Third. The power to regulate commerce is one which affects many subjects, varied and quite unlike in their natures. Some are in their nature of national importance, and subject of uniform regulation, while others are of minor importance, and require regulation of an infinite

variety to suit each local condition. As to such subjects as are national in character, and as are susceptible of one uniform system or plan of regulation, they may be justly said to belong to that class over which Congress has exclusive jurisdiction, and concerning which the States are not permitted to legislate in any respect. As to those that are of minor or local significance, which require to be provided for by such divers rules as the various localities may require, and which may be considered rather of importance to the locality than to the nation at large, the several States are permitted to legislate in the absence of legislation thereon by Congress; but, even then, when Congress does legislate upon such subjects, the State legislation is excluded and rendered inoperative in so far as it may interfere or conflict with the legislation of Congress.

Fourth. Commerce with foreign countries is in its nature national, and the States have no power to regulate or interfere with same, even in the absence of legislation by Congress, for the absence of regulation by the National Government is to be construed, not as a permission to the States to regulate the same, but as indicating an intention by Congress that such commerce be free of restrictions.

Fifth. In delegating to the National Government the exclusive power to regulate interstate and foreign commerce, the several States did not surrender to it their sovereign power to be exercised for the preservation of the health, safety and morals of its citizens.

Sixth. But whatever may be the nature or extent of this sovereign or police power, it cannot be exercised over a subject confided exclusively to the National Government,

nor can the State in its exercise, for any purpose whatever, encroach upon powers granted to the general Government, or upon rights granted or secured by the supreme law of the land. Where, therefore, a statute of a State, enacted in pursuance of such police power, invades the domain of legislation belonging exclusively to Congress, or encroaches upon powers granted to the general Government, or impairs rights secured by the supreme law of the land, it is to that extent void.

In the light of these well established principles we shall now consider this Louisiana statute as interpreted and applied by the Supreme Court of Louisiana.

The powers conferred by this statute upon the Board of Health are of the broadest and most unlimited character. It rests with that Board to say what one or more of many hundreds of contagious and infectious diseases exist; to what extent a disease must exist to render a territory infected; what part or portion of territory is infected; what kind or class of persons would, in its judgment, add to or increase the prevalence of that disease by their introduction into the State. In other words, it vests absolute jurisdiction and authority in this Board to declare non-intercourse between any part, or the whole of the State of Louisiana, and any or all the other States and foreign countries. It vests it with authority to absolutely prohibit interstate and international commerce to such an extent and for such a length of time as a majority of these seven men may determine.

In effect, the result of the judgment of the Supreme Court of Louisiana was to declare that the State of Louisiana had the power to vest authority in the State Board of

Health, in its discretion, to prohibit the introduction into any part of the State, which they may have decided was infected with a contagious or infectious disease, any and all persons, even though they might be perfectly healthy, or even immune to the prevailing disease, whenever they should declare that in their judgment the introduction of such persons would add to, or increase the prevalence of the disease. This part of the law, it is clear, is directed to the exclusion of healthy persons seeking to enter the State. The other sections of the law give the power to intercept or prevent the entrance of diseased persons. And, as in this case it is admitted that the "Britannia's" passengers were healthy, and had not come from any place where any infectious or contagious disease was prevalent, the bald question is presented, whether the State of Louisiana, in the exercise of its police power, can prohibit persons coming from foreign countries from entering its territory, upon the theory that, though healthy and otherwise not objectionable, yet, in the opinion of certain officials, they may contract a prevailing disease of some kind, and thereby tend to spread it among the people residing there.

It is in this respect, we say, that the statute, so construed and applied, is vicious and encroaches upon the powers vested in the National Government.

While so far as the consideration of the question in hand is concerned, it may be admitted that the grant of the authority aforesaid may in all respects be a beneficent and proper one for the protection of the health of citizens of Louisiana, nevertheless, its exercise is not unrestricted, but finds its limitation when it reaches or touches subjects confided to the exclusive jurisdiction of Congress, and be-

yond that point, it is inoperative, and must give way to the paramount authority of the National Government.

It is the exercise of this sovereign power by the several States that has given occasion to this Court to be often called upon to define and declare the limits of the State and Federal power, and more especially has the exercise of that power in relation to commerce been a frequent cause of appeal to this Court.

It becomes, therefore, necessary to consider and determine, with reference to interstate and international commerce, the legitimate scope and the limitations of the police power of the States.

There can be no question, from any aspect, that the police power can be exercised for the suppression of crime, disease and pauperism, and that as an incident to the exercise of that power to that end, the State may rightfully exclude from its borders criminals, paupers, or persons or goods affected with infectious or contagious diseases. Of necessity, if this power of exclusion is to be effective, there must be an opportunity to investigate and inspect not only the persons and things about to enter its borders, but also the vehicles of commerce used to transport them. And as a necessary result of this power of investigation and inspection, the State has the right to stop at its borders both interstate and international commerce a reasonable length of time to enable it to ascertain whether the persons and things, subjects thereof, are in fact in anywise affected with disease likely to prove dangerous to its citizens. And on the discovery of the existence of such disease in such persons or property, it may either exclude same, if likely to be of a permanent

character, or may detain same in quarantine, and use such means as may be necessary to suppress same, if the disease is likely to be of a temporary kind. In the same way, if there be just grounds to suspect that such persons or property have been exposed to any infectious or contagious disease, such persons or things may be detained a reasonable length of time in order to ascertain whether they are in fact infected, but no longer. Such quarantine and inspection laws, however, are in no just sense regulations of commerce; they may in a measure delay or affect it, but when legally exercised, do not regulate, or impose such burdens upon commerce as to amount to regulation within the meaning of the Constitution.

The detection and suppression or exclusion of criminals, paupers, and persons and things infected with disease is the basis and sole justification of the enforcement of quarantine and inspection laws, and when enacted for this purpose and limited to this extent, they are upheld as a valid exercise of the police power of the State. Whenever, and to the extent that they go beyond this, they amount to an interference with commerce, and invade the domain of the National Government, and are void, for the State can never in the exercise of any of its reserved powers interfere with the powers confered upon Congress in the control and regulation of legitimate interstate and international commerce.

Turning now to the decisions of this Court, it will be found that the basis upon which it has upheld the exclusion, inspection and quarantine laws of various States, is that criminals, diseased persons and things, and paupers, **are not legitimate subjects of commerce.** They may be at-

tendant evils, but are not legitimate subjects of traffic and transportation, and, therefore, in their exclusion or detention, the State is not interfering with **legitimate** commerce, which is the only kind entitled to the protection of the Constitution.

In the **License Cases, 5 How., at pages 576, 577,** Mr. Chief Justice Taney said:

"It has indeed been suggested that if a State deems the traffic in ardent spirits to be injurious to its citizens and calculated to introduce immorality, vice and pauperism into the State, it may constitutionally refuse to permit its importation notwithstanding the laws of Congress; and that a State may do this upon the same principle that it may resist and prevent the introduction of disease, pestilence or pauperism from abroad. But it must be remembered that disease, pestilence and pauperism are not subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in but to be prevented as far as human foresight or human means can guard against them. But spirits and distilled liquors are universally admitted to be subjects of ownership and property, and are therefore subjects of exchange, barter, and traffic like any other commodity in which a right of property exists. And Congress, under its general power to regulate commerce with foreign nations, may prescribe what articles of merchandise shall be admitted and what excluded; and may therefore admit, or not, as it shall deem best, the importation of ardent spirits. And inasmuch as the laws of Congress authorize their importation, no State has a right to prohibit their introduction."

In **Leisy vs. Hardin, 135 U. S. at p. 113,** Mr. Chief Justice Fuller, referring with approbation to the decision rendered by Mr. Justice Matthews in **Bowman vs. Railway, 125 U. S. 465,** says:

"Articles in such a condition as tend to spread disease

are not merchantable, are not legitimate subjects of trade and commerce, and the self-protecting power of each State, therefore, may be rightfully exercised against their introduction, and such exercise of power cannot be considered a regulation of commerce prohibited by the Constitution; and the observations of Mr. Justice Catron in the **License Cases, 5 How. 504, 599,** are quoted to the effect that **what does not belong to commerce is within the jurisdiction of the police power of the State, but that which does belong to commerce is within the jurisdiction of the United States**; and to extend the police power over subjects of commerce would be to make commerce subordinate to that power; and would enable the State to bring within the police power 'any article of consumption that a State may wish to exclude, whether it belong to that which was drunk, or to food and clothing; and with nearly equal claims to propriety, as malt liquors and the products of fruits other than grapes stand on no higher ground than the light wines of this and other countries excluded by the effect of the law as it now stands. And it would be only another step to regulate real or supposed extravagance in food or clothing.' "

Mr. Chief Justice Fuller in **Re Rahrer, 140 U. S. at p. 557,** quoting the **License Cases, p. 599,** says:

"The law and the decision apply equally to foreign and domestic spirits, as they must do on the principle assumed in support of the law. The assumption is that the police power was not touched by the Constitution but left to the States as the Constitution found it. This is admitted; and whenever a thing from character or condition is of a description to be regulated by the power in the State, then the regulation may be made by the State and Congress cannot interfere. But this must always depend upon facts subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to and is subject to be regulated as a part of foreign commerce or of commerce among the States. **If from its nature it does not belong to commerce, or if its condition from putrescence or other cause**

is such when it is about to enter the State that it no longer belongs to commerce, or in other words is not a commercial article, then the State power may exclude its introduction. And as an incident to this power, the State may use means to ascertain the fact, and here is the limit between the sovereign power of the State and the Federal power; **that is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State; and that which does belong to commerce is within the jurisdiction of the United States.** And to this limit must all the general views come that were suggested in the reasoning of the court in the cases of **Gibbons vs. Ogden; Brown vs. Maryland; and New York vs. Miln.**"

But it is quite different with property the subject of daily commercial transactions, as well as with persons not affected with disease or tainted with crime; they are legitimate subjects of interstate and foreign commerce, and their transportation and travel from State to State and from foreign countries are under the protection of the Constitution and cannot be restrained save by Congress itself.

In **Leisy vs. Hardin, 135 U. S. at p. 125,** where the question was whether, it being the public policy of the State of Iowa to prohibit the manufacture and sale of intoxicating liquors within the border of that State, it could prohibit the transportation into its borders from another State, and the sale there in the original package, of such intoxicating liquors, this Court, through Mr. Chief Justice Fuller, said:

"Whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we cannot hold that any articles which Congress recognizes as subjects of interstate commerce are not such, or that whatever are thus recognized can be controlled by any State laws amounting to regulations while they retain their character, although at the same time, if directly dangerous

in themselves, the State may take appropriate measures to guard against injury before it obtains complete jurisdiction over them. To concede to a State the power to exclude, directly or indirectly, articles so situated without Congressional permission, is to concede to a majority of the people of a State represented in the State Legislature the power to regulate commercial intercourse between the States by determining what shall be its subjects, when that power was distinctly granted to be exercised by the people of the United States represented in Congress, and its possession by the latter was considered essential to that more perfect union which the Constitution was adopted to create."

Mr. Justice Matthews, in **Bowman vs. Ry. Co., 125 U. S. at p. 489**, said, in reference to a statute of Iowa having as its purpose the prohibition of importation of spiritous liquors into the State, as follows:

"It has never been regarded as within the legitimate scope of inspection laws to prohibit trade in respect to any known article of commerce, irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequences of its use or abuse.

"For similar reasons, the statute of Iowa under consideration cannot be regarded as a regulation of quarantine or a sanitary provision for the purpose of protecting the physical health of the community, or a law to prevent the introduction into the State of disease, contagious, infectious or otherwise. Doubtless, the States have the power to provide by law suitable measures to prevent the introduction into the States of articles of trade which on account of their existing condition would bring in and spread disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of small pox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsi-

cally and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercise of power cannot be considered regulations of commerce prohibited by the Constitution."

The learned Justice then quotes with approval the observations of Mr. Justice Catron in the **License Cases, supra.** He then proceeds (p. 498) as follows:

"The section of the statute of Iowa, the validity of which is drawn in question in this case, does not fall within our enumeration of the legitimate exertions of the police power. It is not an exercise of the jurisdiction of the State over persons and property within its limits. On the contrary, it is an attempt to exert that jurisdiction over persons and property within the limits of other States. It seeks to prohibit and stop their passage and importation into its own limits, and is designed as a regulation for the conduct of commerce before the merchandise is brought to its border. It is not one of those local regulations designed to aid and facilitate commerce; it is not an inspection law to secure the due quality and measure of a commodity; it is a law to regulate or restrict the sale of an article deemed injurious to the health and morals of the community; it is not a regulation confined to the purely internal and domestic commerce of the State; it is not a restriction which only operates upon property after it has become mingled with, and forms part of the mass of the property within the State. It is, on the other hand, a regulation directly affecting interstate commerce in an essential and vital point. If authorized in the present instance upon the grounds and motives of the policy which has dictated it, the very reason would justify any and every other State regulation of interstate commerce upon any grounds and reasons which might prompt in particular cases their adoption. It is, therefore, a regulation of that character which constitutes an unauthorized

interference with the power given to Congress over the subject."

In **Minnesota vs. Barber, 136 U. S. 313,** the Court had occasion to consider a statute of Minnesota, requiring that cattle, sheep and swine designed for slaughter for human food shall be inspected in that State before being slaughtered, and held same to be unconstitutional, as in effect prohibiting the importation into that State of all fresh beef, mutton or pork, although entirely sound, healthy and fit for human food. Mr. Justice Harland, in delivering the opinion of the Court (p. 328), said:

"But a law providing for the inspection of animals whose meats are designed for human food cannot be regarded as a rightful exertion of the police powers of the State, if the inspection prescribed is of such a character or is burdened with such conditions as will prevent altogether the introduction into the State of sound meats, the products of animals slaughtered in other States. It is one thing for a State to exclude from its limits cattle, sheep, or swine actually diseased, or meats that, by reason of their condition, or the condition of the animals from which they are taken, are unfit for human food, and punish all sales of such animals or of such meats within its limits. It is quite a different thing for a State to declare, as did Minnesota by the necessary operation of its statute, that fresh beef, veal, mutton, lamb, or pork, articles that are used in every part of this country to support human life, shall not be sold at all for human food within its limits, unless the animals from which such meats are taken are inspected in that State, or as is practically said, unless the animal is slaughtered in that State."

A case similar in principle to the one at bar came before this Court in **Railway vs. Husen, 95 U. S. 465.** In that case, there was drawn in question the constitutionality of a statute of Missouri, which provided for the exclusion from

Missouri of all cattle coming from Texas during certain months of the year, it being contended that such cattle were liable to be infected with a dangerous infectious disease known as Texas fever. The Court held the statute void for the reason that it made no distinction between healthy cattle and unhealthy cattle coming from Texas. It held that while it would have been competent for the State of Missouri, in the exercise of its police power, to pass quarantine and inspection laws for the purpose of detecting such of the cattle as were diseased, and to exclude such as were so infected, it was a violation of the commerce clause of the Federal Constitution to prohibit the introduction of healthy cattle from that State into Missouri, and that the statute in effect authorized such exclusion, and was therefore void.

An interesting case, involving the right of a State to impose conditions upon the entrance into its borders of persons from other States or foreign countries, was decided by the Supreme Court of Maine in the case of **City of Bangor vs. Smith**, 83 Me. 322. In this case, there was drawn in question the validity of a statute of that State, which provided that any carrier, which brought into the State a person not having a settlement therein, must remove him from the State upon request of the proper officers, if he fell into distress within one year, or should be liable for his support. The defendant had brought from New York into that State on his steamship 56 Italian laborers, who within a year became paupers, and suit was brought to recover the expense of their support by the City. The statute, as applied, was declared by the Supreme Court of Maine to be a regulation

of interstate commerce and void. In the course of its opinion, the Court said:

"But it is claimed that this is the exercise of the police power of the State. That the State in the exercise of its police power may indirectly to some extent affect commerce between foreign countries and the United States or between the States, may be conceded. But what the police power of the State embraces and how far it extends does not appear to have been definitely determined. It may exercise it to require quarantine or inspection before landing persons brought from abroad. It may exercise it to prevent the landing of passengers infected with contagious disease. It may exercise it over the landing of convicted felons from abroad. It may exercise it over persons who have been subjected to contagious diseases, so as to be liable to be infected with it and communicate it to others, and thereby endanger the health of the community. But it cannot exercise it to prevent commerce, nor can it exercise it over the carrying or landing of persons who are not at the time they are brought into the State in a condition to be dangerous to the public. It cannot exercise it over persons who are free from contagion, who have not been subjected to any danger of contagious disease, on the ground that they may become dangerous in that respect within a year or any other fixed period of time after the landing."

A case almost exactly parallel to the case at bar arose in California, and was decided by the Supreme Court of that State in **State vs. Steamship Constitution, 42 Cal. 578.** The statute drawn in question in that case vested in certain officers the exclusion from the State of persons that were affected with disease, or that were criminals, or that were liable to become a public charge. The statute was framed in such broad language that the Court found that it authorized the exclusion of healthy persons not of that description. It was one of the many statutes framed with the in-

tention of excluding Chinese and other aliens, whose presence it was admitted was detrimental to the welfare and the morals of the citizens of the State. In the course of an able opinion, the Court said:

"But whilst conceding the authority of the State to enact police and sanitary regulations for preserving the health and morals of the people, counsel insists that it is neither one or the other so far as it operates upon persons who at the time of landing are neither paupers, vagabonds, or criminals, or affected with any mental or bodily infirmity, but on the contrary are perfectly sound in body and mind and in every way fitted to earn a support. It is said the police and sanitary regulations can have no just application to persons of this description, and that it is an abuse of terms to say that they are proper subjects for such regulations because possibly they may at some future day become paupers, vagabonds, or criminals, or sick, infirm, or otherwise disabled. This view of the question appears to me to be unanswerable. It is a misnomer to call that a police regulation, in the sense in which that term is here applied, in so far as it operates upon persons of good morals and upright character, and who are no more likely than the average of mankind to become paupers, vagabonds, or criminals; and it is equally a misnomer to term that a sanitary regulation which applies only to persons in good health and sound mind, and who are not more liable than other persons hereafter to become a public charge from sickness or infirmity. The power to make police and sanitary regulations, prescribing the terms on which certain classes of persons shall be admitted into this State, necessarily includes the power to exclude them altogether, if they fail to comply with the prescribed conditions. If a criminal from a penal colony should be required to pay $100 upon his entrance into this State, he might be excluded altogether if he refused to pay the required sum; or a pauper from a foreign almshouse might be refused permission to land in this State on any terms, or might be received on any terms the State might prescribe. These

would be merely police regulations in the proper and just sense of that term. But if the State, under pretense of police or health regulations, should enact that no person should hereafter enter this State unless he would first pay a sum of money, or give a bond with sureties for his future good behavior, or conditional that he would not become a public charge during his sojourn in this State, this could in no just sense be termed a police or sanitary regulation, in so far as it would be applicable to persons of good character and morals, and who were sound in body and mind. If the State could exercise such a power as this under the pretense of preserving the public health and morals, it is obvious that it might destroy the entire passenger traffic between this State and foreign countries, and even with our sister States. It might for the same reason prohibit the importation of all merchandise from foreign countries for fear that it might be infected with some secret cause of disease, which in the future might possibly endanger the health of the community. Whilst the Legislature may exercise a wide discretion as to the proper subjects of police and sanitary regulations, and as to the proper mode of preserving health and morals of the community by means of these regulations, it cannot under color of this power enact laws which in no proximate degree are germane to the subject. I am, therefore, of the opinion that a statute which obstructs the entrance into the State of persons who are neither paupers, vagabonds, nor criminals, or in anywise unsound or infirm in body or mind, is not a valid exercise of the police power of the State in any just sense of the word."

To the same effect, see **Scott vs. Donald, 165 U. S. 58; In re Schollenberger, 171 U. S. 1; Henderson vs. Mayor, 92 U. S. 259.**

In the case at bar, it is not pretended that these persons were infected with any disease that was liable to be communicated to the community, or that they were paupers or criminals, but on the contrary each and all of them had ad-

mittedly come from a healthy port, had remained in good health on the voyage, and when inspected and examined by the officers of the defendant Board at the quarantine station, had been given certificates of good health. In the resolution thereafter directing their exclusion (Trans. pp. 17-18) there is even no intimation or claim that they were not immunes from the disease said to be prevalent, or that they for any reason were more likely than other persons to be afflicted after their arrival, but the action seems to be based solely upon the number of them. Under this resolution, they might all have entered the State singly, but not as a body. But admitting for the sake of the argument that the physicians constituting the Board really believed, for any reason, that these persons, if permitted to land, would be likely to become infected by the disease alleged to exist in the State, and thus possibly cause a spread of the disease, nevertheless that would not have justified their exclusion. Being perfectly healthy, they were legitimate subjects of transportation, and under the protection of the Constitution, the plaintiff had the right to bring and disembark them there, free of all restraints except such as the National Government may have prescribed. The State was bound to permit them to enter, and could not justly have excluded them upon the theory that possibly at some future time their presence might prove injurious to its citizens. The State's remedy was not in excluding them, but in enforcing, after they ceased being subjects of international commerce, and had become subject to its jurisdiction, such sanitary rules and regulations in regard to them as seemed best. The fact that the State did not see fit to undertake

this task, or that it could or would not enforce its sanitary laws after the landing of these people is no defense for attempting to deny them rights secured under the supreme law of the land. If the State or its officers believe that a person, whose character is such that his right to enter its borders is guaranteed by the Constitution, will, for any reason, thereafter become dangerous to public health, morals or order by a disregard of its police or sanitary laws, such tendency could be readily checked by a proper enforcement of its laws. To permit the exclusion of any person then unobjectionable, upon the ground that, in the opinion or judgment of some official or officials, he might possibly contract at some future day some disease and thereby spread it among the community, or that he would become vicious and thereafter injure public morals or affect the public safety, would open the door to all sorts of oppression.

In the case of **Ah Fong, 3 Sawyer, 144 (1 Fed. Cases 213)**, decided on Circuit by **Mr. Justice Field,** and subsequently followed by the Supreme Court in **Chy Lung vs. Freeman, 92 U. S. 275,** a statute of California, directed to the exclusion of Chinese from that State, was passed upon. It was contended in support of the validity of the law that the Chinese were of such low moral character, opposed to our system of government, unwilling to adapt themselves to our laws, criminals by nature, and generally dangerous to the public health and morals of our citizens, that the State, therefore, in the exercise of its police power, had the right to exclude such persons from its borders. But the learned Justice said:

"But the extent of the power of the State to exclude a

foreigner from its territory is limited by the right in which it has its origin, the right of self-defense. Whatever outside of the legitimate exercise of this right affects the intercourse of foreigners with our people, their immigration to this country and residence therein is exclusively within the jurisdiction of the general government, and is not subject to State control or interference. To that government the treaty-making power is confided; also, the power to regulate commerce with foreign nations, which includes intercourse with them as well as traffic; also the power to prescribe the conditions of migration or importation of persons, and rules of naturalization; whilst the States are forbidden to enter into any treaty, alliance, or confederation with other nations.

"I am aware that the right of the State to exclude from its limits any persons whom it may deem dangerous or injurious to the interests and welfare of its citizens has been asserted by eminent judges of the Supreme Court of the United States. Mr. Chief Justice Taney maintained the existence of this right in his dissenting opinion in the Passenger Cases, and asserted that the power had been recognized in previous decisions of the Court. The language of the opinion in the case of the **City of New York vs. Miln, 11 Pet. (36 U. S.) 141,** would seem to sustain this doctrine. But neither in the **Passenger Cases** nor in the case of the **City of New York vs. Miln,** did the decision of the Court require any consideration of the power of exclusion, which the State possessed; and all that was said by the eminent judges in those cases upon that subject was argumentative and not necessary and authoritative.

"But independent of this consideration, we cannot shut our eyes to the fact that much which was formerly said upon the power of the State in this respect, grew out of the necessity which the Southern States, in which the institution of slavery existed, felt of excluding free negroes from their limits. As in some States negroes were citizens, the right to exclude them from the slave States could only be maintained by the assertion of a power to exclude all persons whom they might deem dangerous or injurious to

their interests. But at this day no such power would be asserted, or, if asserted, allowed, in any Federal court. And the most serious consequences affecting the relations of the nation with other countries might, and undoubtedly would, follow from any attempt at its exercise. Its maintenance would enable any State to involve the nation in war, however disposed to peace the people at large might be.

"Where the evil apprehended by the State from the ingress of foreigners is, that such foreigners will disregard the laws of the State, and thus be injurious to its peace, the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties. Gambling is considered by most States to be injurious to the morals of their people, and is made a public offense. It would hardly be considered as a legitimate exercise of the police power of the States to prevent a foreigner who had been a gambler in his own country from landing in ours. If, after landing, he pursues his former occupation, fine him, and if he persists in it imprison him, and the evil will be remedied. In some States the manufacture and sale of spirituous and intoxicating liquors are forbidden and punished as a misdemeanor. If the foreigner coming to our shore is a manufacturer or dealer in such liquors, it would be deemed an illegitimate exercise of the police power to exclude him, on account of his calling, from the State. The remedy against any apprehended manufacture and sale would lie in such case in the enforcement of the penal laws of the State. So if lewd women, or lewd men, even if the latter be of that baser sort, who, when Paul preached at Thessalonica, set all the city in an uproar (Acts xvii, verse 5), land on our shores, the remedy against any subsequent lewd conduct on their part must be found in good laws or good municipal regulations and a vigorous police. It is evident that if the possible violation of the laws of the State by an immigrant, or the supposed immorality of his past life or profession, where that immorality has not already resulted in a conviction for a felony, is to determine his right to land and to reside in the State, or to pass through other and interior States, a door will be open to all sorts of op-

pression. The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties besides low and despised Chinese women, are the subjects of its application, and would then be seen to be a grievous departure from principle."

If the construction of this statute by the Supreme Court of Louisiana is correct, then the power to act as they did was surely vested by the State in the Board of Health. This statute is a most remarkable one, and certainly, if valid, a most unusual extension of the police power. As we have seen, by its terms, the State Board of Health has the jurisdiction and power to declare: (1) what are infectious or contagious diseases; (2) what shall constitute infection; (3) what extent of territory is infected; (4) what extent of territory shall be quarantined or closed to intercourse; (5) what shall be the duration of such non-intercourse; and (6) what persons may or may not be permitted to enter such infected territory.

Being a special tribunal for the determination of these questions, and being vested with absolute discretion, their findings would not be subject to review.

Nishi Mura vs. United States, 142 U. S. 660.

Martin vs. Mott, 12 Wheat. 21.

Philadelphia vs. Stimpson, 14 Pet. 458.

In re Oteiza, 136 U. S. 330.

Hellon vs. Merritt, 110 U. S. 97.

Benson vs. McMahon, 127 U. S. 457.

How many contagious or infectious diseases there are, we are unable to say, but they vary in virulence from bubonic plague to measles and mumps and grippe. To each of these extensive classes of diseases, certain classes of

people are more susceptible than others. Some one or more of these diseases are always prevalent in different communities in this State. So that under the authority given this Board by the State, it could declare that the whole or any part of the State was infected with one or more such diseases, and that in its opinion the introduction of persons from places above certain degrees of latitude would tend to spread the disease, and thereupon prevent intercourse with all States or countries beyond that parallel. To illustrate further. Your Honors are, no doubt, aware that it is claimed that there never has been any yellow fever in Texas for a great many years, due to its excellent quarantine system, so that it is plain the people of Texas are not immunes; whereas, there have been frequent occurrences of fever of late in Louisiana and Mississippi, in fact by some it is claimed that the disease is endemic in this State, so that most of the people in the latter States are immunes. On the occurrence of the fever in New Orleans, the Board of Health could promply declare it infected, and state that in its judgment none but immunes should be allowed to enter the city. As the citizens of Texas are not immunes, and the citizens of Mississippi are, an embargo is placed on the former while intercourse is unrestricted as to the latter. If, therefore, it became the policy of Louisiana to cease intercourse with any State, it would have in its Board of Health a ready and powerful mechanism with which to accomplish that end.

It is well known that of late years Italian immigration has been exceedingly heavy into Louisiana. By many Italians are considered an undesirable class of citizens. If

at any time public sentiment became strong in that belief so that it became the policy of the State to stop that immigration, just as it became the policy of California in reference to Chinese, it would be an easy matter to put an end to it through the action of the Board of Health in declaring that various infectious and contagious diseases existed, and that the presence of these unacclimated foreigners would tend to spread them in the community. Small-pox is a disease to which negroes are particularly susceptible. It prevails to-day among them throughout the State, and under its alleged powers, this Board could prohibit anyone of negro blood from entering the State on the theory it would be "adding fuel to the flame."

In this case the State Courts, as well as the other State authorities, were misled by a metaphor. Their general idea was that there was illness in New Orleans and that the importation of healthy people from a healthy foreign port "would add fuel to the flame." Inspired by this figure of rhetoric, they concluded that the police power of the State of Louisiana would justify the interference with international commerce, as shown by this record. It seems to us that such reasoning is dangerous and fallacious. If pushed to its logical extent it easily leads to the *reductio ad absurdum*. We will all agree that the police power extends to the protection of the morals as well as the health of the community which is within the sphere of its jurisdiction. Now, there can be no doubt that a certain amount of vice is found in the City of New Orleans. We do not claim a larger share than Chicago, for example, in proportion to our population, but everyone will admit that there is a large amount of immorality in our City, and that the police

power of the State and of the municipality may be exercised to reduce and if possible to extirpate vice and crime and disorder. But, suppose the State of Louisiana, through its legislative, executive and judicial departments, should declare that, in order to effect this worthy object, it was necessary to forbid the transportation of any more passengers from any European port to our City. Let us further suppose a European city of a highly moral character concerning which nothing could be said against the principles or habits of its people; and let us suppose a steamship coming to New Orleans from that highly moral foreign port with a number of passengers of excellent moral character. Let us further suppose this steamship was stopped at the mouth of the Mississippi and gravely told by the State authorities that the advent of the passengers she was carrying "would add fuel to the flame;" that as soon as these virtuous people should be landed in our City they would become demoralized, they would enter upon a career of wild dissipation and debauchery; and that, therefore, the local authorities had a perfect right to put a stop to international commerce of this kind.

It might be further supposed that the authorities at New Orleans under the same conditions might arrest and send away a party of theological students coming by steamship from New York, and thus interfere with interstate transportation of passengers, upon the pretext that the guileless youths might become demoralized by the frivolities of our City and add fuel to the flame of vice which is constantly burning in our slums. Is it not thus plain that we arrive at the *reductio ad absurdum*?

Passenger Cases, 7 How., at page 407.

It is no answer to say that this statute operates equally upon all persons, resident as well as non-resident (Mr. Justice Harlan in **Minnesota vs. Barber, 136 U. S. 326**, citing **Robbins vs. Shelby Taxing District, 120 U. S. 489; State Freight Tax, 15 Wall. 232**), or that the Board will not abuse the wide authority given them by the statute. It is a conclusive presumption that when authority is conferred it will be exercised to its full limit; it was conferred for no other purpose than to be exercised at the discretion of the Board. It is idle to say that officials clothed with this arbitrary and unrestricted authority will not abuse it, or that the material interests of the State will prevent it being used oppressively. In the language of Mr. Justice Field in **Gloucester vs. Pennsylvania, 114 U. S. at pages 205-6**:

"Those engaged in foreign and interstate commerce are not bound to trust to its (the State's) moderation in that respect; they require security. And they may rely on the power of Congress to prevent any interference by the State until the act of commerce, the transportation of passengers and freight, is complete."

It is a canon of construction in testing the constitutionality of a statute that its natural and reasonable effect should be regarded (**Chy Lung vs. Freeman, 92 U. S. 279; Railway vs. Husen, 95 U. S. 465**), and so tested the effect of this statute is to vest three of a board of seven physicians with unrestrained power and discretion to determine how, when and where, citizens of other States, and foreigners, untainted by disease or crime, may enter the State of Louisiana. It attempts to give them an authority which can only be exercised by Congress.

The statute in question in this case is in many respects similar to the one considered in **Chy Lung vs. Freeman, 92**

U. S. 275. In that case the statute authorized the Commissioner of Immigration to satisfy himself whether or not any passenger, who should arrive from any foreign port, was insane, deaf, dumb, blind, a convicted criminal, or a lewd or debauched woman, etc., and any persons found to belong to these classes should be excluded, unless a bond be given by the master of the ship to secure their support or good behavior, etc. The Court declared it a most extraordinary statute (p. 277), placing, as it did, the power in the hands of the Commissioner to prevent entirely vessels engaged in a foreign trade from carrying passengers, by enabling him simply to declare a ship's passengers to be of the prohibited classes, and thereupon to require the master to give bonds for them all. This statute did not in terms authorize the Commissioner to exclude such persons as he might decide to belong to the prohibited classes, as the statute in this case does, but the power to impose conditions on admission implies a power to exclude, and the Court found no difficulty in that such statute vested the officer with power to interfere with foreign commerce, and held it void.

How much more forcibly the reasoning of the Court in that case applies to the facts in the instant one, when the power of exclusion of healthy persons coming from healthy countries is expressly conferred?

V.

SECOND POINT.

That portion of Section 8 of Act 192 of the General Assembly of Louisiana of 1898, relied on by the defendants in error, is void on its face, and void as construed by the Supreme Court of Louisiana, and as applied by the said defend-

ants in error herein. On its face it contains a grant of power that is illegal; and as construed and applied it is operated to deprive the plaintiff in error of its liberty and property without due process of law and to deny it the equal protection of the laws in contravention of Section 1 of the 14th Article of Amendment of the Constitution of the United States.

We may first properly dispose of certain preliminary questions before discussing the merits of the foregoing proposition.

(*a*) There can be no doubt as to the power of this Court to entertain and decide the issue whether the rights of the plaintiff in error under the 14th Amendment had been invaded or infringed. In the Assignment of Errors filed in the Supreme Court of Louisiana before hearing and decision, it was insisted that the judgment of the lower court had denied the rights of the plaintiff in error under the said Amendment; and the merits of this contention the Supreme Court of Louisiana considered and denied, saying that the contention was "utterly untenable." (Record, page 25). **Oxley Stave Co. vs. Butler County, 166 U. S., pages 648 and 656, and authorities cited; Chicago & N. W. Ry. Co. vs. Chicago, 164 U. S. 454-457; Manell vs. Newbold, 18 How. 511.**

(*b*) There is equally little doubt that the plaintiff in error is a **person** within the meaning and scope of the 14th Amendment.

"It is now settled that corporations are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law as well as a denial of the equal protection of the laws." **Covington Turnpike Co. vs. Sanford, 164 U. S. 578-592; Santa Clara Co. vs. Southern Pacific R. R. Co., 118 U. S. 394.**

"The rights and securities granted to persons by that instrument cannot be disregarded in respect to those artificial entities, called corporations, any more than they are in respect to the individuals, who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the laws than it has to the individual citizen." **Santa Fe Ry. Co. vs. Ellis, 165 U. S. 150 and 154; Allgeyer vs. La., 165 U. S. 578; Pembina Mining Co. vs. Penn, 119 U. S. 110, 119.**

(c) It is further settled that the word person includes an alien and that the amendment entitles him to protection of liberty and property. **Yick Wo vs. Hopkins, 118 U. S. 356; Re Hoover, 30 Federal Reporter, 51; Re Tiburcio Parrott, 1 Federal Reporter, 481, 497; U. S. vs. Wong Dep Ken, 57 Fed. Rep. 206; Ah Kow vs. Nunan, 5 Sawyer, 552; Ah Fong, 3 Sawyer, 154, 157.**

(d) It, therefore, follows that the plaintiff in error is a person within the meaning of the constitutional provisions.

(e) It is further clear that the plaintiff in error is not only within that category of the amendment which forbids any State to "deprive any person of life, liberty, or property without due process of law;" but also within that category which forbids any State to "deny to any person within its jurisdiction the equal protection of the laws." Act 149 of the General Assembly of Louisiana of 1890 (Appendix B) provides that all corporations domiciled outside of the State, except mercantile corporations, shall file with the Secretary of State a declaration of domicile, and shall designate an agent upon whom service of legal process shall be made; and that service of process on such agent shall suffice to bring the corporation into court.

It appears from the petitions in this case and the exception admits that the plaintiff in error is doing a non-mercantile business in the State of Louisiana, and that Sawers & Sons are, for the purposes of its business, its agents in the City of New Orleans. It is a fact, and the Court will presume, that the plaintiff in error has complied with the statute above mentioned, and that it is pursuing its said business under the license, and with the permission of the State; and therefore no suggestion can lie that the plaintiff in error is not "within the jurisdiction" of the State of Louisiana so as to be entitled to the equal protection of its laws.

(*f*) The right of the plaintiff in error to freely enter the Port of New Orleans with its ships, and to lawfully trade there free of damaging and arbitrary interference by the State of Louisiana or any agency thereof, is granted alike by the Constitution, the treaty of the United States with France and the legislation of Congress. **U. S. Revised Statutes, Secs. 1977 and 709.**

This right is property under every definition of that term, and its deprivation or curtailment constitutes a taking of property and an infringement of liberty.

"The 14th Amendment * * * undoubtedly intended that there should be no arbitrary deprivation of life or liberty, or the arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and to acquire and enjoy property; that they should have like access to the Courts of the Country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the

pursuits of anyone except as applied to the same pursuits of others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition." **Barbier vs. Connolly, 113 U. S. 27, 31.**

"The main guarantee of private rights against unjust legislation is found in that memorable clause of the Bill of Rights, that no man shall be deprived of life, liberty or property, without due process of law. This guaranty is not construed in any narrow or technical sense. The right to life may be invaded without its destruction. One may be deprived of his liberty in a constitutional sense without putting his body in confinement. Property may be taken without manual interference therewith, or its physical destruction." **Bertholf vs. O'Reilly, 74 N. Y. 509, Tiedeman Lims. Police Power, Sec. 3.**

The deprivation and taking are admitted, and the sole question is, whether such deprivation and taking were lawful.

(*g*) We need not go far afield to seek either the history and reasons which preceded and led to the adoption of the provision which we attack, or the extent of the power intended to be conferred thereby. The former is conveniently afforded, and the latter defined in strict harmony with the legislative intention, by the opinion of the Supreme Court of Louisiana. Speaking of the Board, defendant in error here, and the power conferred by **Section 8 of Act 192 of 1898,** the Court says:

"It is very clear that the General Assembly intended to grant additional powers to the Board, and this very power was, beyond question, one of them.

"During the fall of 1897, and during the existence of an epidemic, a vessel arrived in the Mississippi River with immigrants aboard, under conditions similar to those under which the Britannia reached the same stream in 1898.

"The excited public discussion at the time as to the right of the State Board under the then existing law to prevent the landing of the immigrants, and as to its duty in the premises, was so extended as to authorize us to take judicial notice of the fact, and in our opinion the clause in the present Act, which covers that precise matter, was inserted therein for the express purpose of placing the particular question outside of the circumstances of controversy.

"For a number of years past, immigrants had been coming into New Orleans in the autumn from Italy.

"There was a probability, when the General Assembly met in 1898, that the epidemic of 1897 might be repeated and a great probability that immigrants would seek to enter as they had done the year before, to the great danger, not only of the people of Louisiana, but of the immigrants themselves.

"Independently of this, there was great danger to be apprehended from the increasing intercourse between New Orleans and the West India Islands in consequence of a war with Spain.

"It was to ward off these dangers that this particular provision was inserted in the Act of 1898."

This language contains the gist of the matter. The State Board of Health is to have power, and unlimited power, to prohibit the entrance into or through the State of Louisiana of any person or bodies of persons whatsoever on the theory that the entrance or passage of such persons would be (to use the phrase of the Supreme Court of Louisiana) the addition of new "fuel to the flame" of any disease, previously declared by the Board to exist and to be of the character designated as infectious or contagious.

Italian immigration in the fall of the year, however lawful under the existing treaties, is to be the especial object of prevention and was the especial object of prevention in the case at bar.

We think it demonstrable both by reason and authority that this grant of power is void on its face. And if it is void, the defendants are liable, for they have never pretended to act under any other.

By the provisions of Act 192 of 1898, the State Board of Health is given the power to declare the existence of infectious or contagious diseases in any portion of the State, and then to declare the same in quarantine. What diseases shall be considered infectious or contagious, and to what extent a particular disease must prevail to warrant action on the part of the Board, are matters necessarily and properly left to the discretion of the Board itself. The exercise of this discretion to the extent above indicated could not, and would not be reviewed by any tribunal. If measles, in the opinion of the Board, was an infectious and contagious disease, it is not likely that any court would undertake to say that it was not.

So far, the statute is unobjectionable. But having first exercised its discretion in declaring the existence and nature of some disease and having declared "a portion of the State" to be infected with such disease, what limit is there upon the power of the Board? We submit there is none.

It cannot be denied that the phrase, "persons acclimated, unacclimated or said to be immune," is exhaustive. There is no human being who is not embraced by it; prince, pauper, citizen, alien, healthy, diseased, old, young, from whatever spot on the globe, seeking entrance into Louisiana under whatever circumstances and for whatever purpose, each, any or all may be met with the Board's prohibition of entrance. It is not the mere residence of a healthy person in some narrowly defined infected locality that may

be thus prohibited. It is his "introduction" into an undefined infected locality for whatever purpose, whether as a traveler desiring mere passage, or a trader the mere time to transact his business and depart. Again, this introduction is made to depend in nowise upon the likelihood of danger. If the Board has declared the City of New Orleans to be infected by reason of the existence of five cases of yellow fever in the lower portion of the City, a passenger from Europe may not disembark ten miles away in the upper portion for the purpose of taking a train to Washington or Kansas City. He is paternally considered "fresh fuel" and not allowed to risk himself. On the same theory, if a tenement on the outskirts of the City should take fire, the delivery of a fifty pound package of gunpowder in another portion five miles away may be forbidden. The danger is no more remote in the one case than in the other.

And why, after all, may not a healthy person who desires to do so, take his chances of contracting a disease some of which prevails in a locality of large dimensions? What injustice is done to the rest of the community?

Surely, no more than is done every day in the course of nature by the birth of children in that locality. These children are "fresh fuel" and peculiarly liable to add to the "flame;" and yet the wildest germicide would not dream of proposing to isolate them or take them away from their parents. Every citizen of Louisiana who returned from West, East, or North, from Boston, Chicago, Paris, or Hong Kong, and came to New Orleans in the fall of 1898, was "fresh fuel." Every train that entered the city in that fall brought "fresh fuel." It is not pretended, and the contrary is

alleged, that this "fresh fuel" was stopped by the Board of Health, defendants in error here. Its failure to do this subjected the plaintiff in error to a gross and oppressive discrimination. But the question now in hand is, could the entry of all this "fresh fuel" have been lawfully prevented?

The proposition of the defendants in error really comes to this: that instead of being limited to the isolation of those persons who are found to have or are suspected of having disease, they have and should have the power to isolate the rest of the healthy world from any territory over or in which they may allow such cases of disease to remain scattered.

Instead of setting apart any ten or fifty patients that may be discovered with fever in New Orleans in a special portion of the City or elsewhere—in other words, instead of prescribing reasonable regulations governing intercourse with disease actually discovered—the ten or fifty cases are to remain wherever the stricken persons may be, and everyone else, no matter what his health, is to be excluded from all portions of the City because perchance someone may contract the disease, and then pass it on to a citizen who has been daily exposed to the same or greater danger, according to his discretion, his state of health, whether he has met this person or that, been here or there—according to an infinite number of circumstances.

To sum up, the Board has an uncontrolled power and an unreviewable discretion to pronounce at any time, and prolong for any period the existence of any disease, and to stamp it with the character of infectious or contagious; it may declare and determine at will the extent of the territory in

which such disease exists at any time without limitation and without respect to the facts; it may select any person or persons whatsoever as likely to increase the prevalence of the disease, and prohibit his or their entrance without regard to the health of those persons, or the health of the places from which they come, or the likelihood or unlikelihood of their being diseased, and it may then deny to the person or persons so selected any entrance into, or passage through, the portions of the State previously declared to be infected.

This is power absolute, imperial, transcending all law. It will not do to say that the condition precedent to the exercise of the power of the Board is the existence of an infectious or contagious disease in some portion of the State. The creation of this condition precedent to the exercise of its power of exclusion depends wholly on the will of the Board itself. It may say to-day that an infectious disease exists in a certain locality, and thereupon exercise against A its power of exclusion, and to-morrow it may say that the disease no longer exists in that locality, and thereupon permit B to enter. How little the Board would hesitate in the future to create and declare this condition in order to give room for any desired action on its part may be judged by the facts of the present case.

Subsequent to the passage of the resolution attached to the original petition of the plaintiff in error and the notice thereof, the agents of said plaintiff in error at New Orleans were notified that if they attempted to land the Britannia's passengers at any place in the State of Louisiana, quarantine would at once be established and enforced there. It was not pretended, and it was not a fact, that the whole

State was infected; but the Board desired to exclude immigration from Italy in the fall of 1898. The power to exclude had been given it, and it exercised that power to the fullest and most oppressive extent. It made no difference that the end to be attained was to be attained by the declaration of a non-existent fact. The statute put this in the power of the Board, and it used its power.

It is well settled in this Court that the effect of a State statute may be considered in testing its constitutionality, and "if deductions from the face of the ordinance as to its necessary tendency and ultimate actual operation" (**Mr. Justice Matthews, in Yick Wo vs. Hopkins, 118 U. S., at page 373**), results in a conclusion of unconstitutionality, then it seems such unconstitutionality may be declared. **Yick Wo vs. Hopkins, 118 U. S. 356; Chy Lung vs. Freeman, 92 U. S. 279; Henderson vs. Mayor, 92 U. S. 268; City of Baltimore vs. Radecke, 49 Md. 217.**

"The necessary tendency and ultimate actual operation" of the statute at bar, quite apart from the facts of this case, are easy to detect. The State of Louisiana has created in its State Board of Health a machinery perfectly adapted to set at naught the Constitution, laws and treaties of the United States, and to put at the mercy of individual caprice the most sacred rights of the individual. Under the guise of police regulation, the State, through this Board, may dictate a separate commercial policy and may regulate immigration into its borders at pleasure. The Board may discriminate against the ships or subjects of any State or Kingdom, or against the ships of any corporation or individual. It may say to 100 British subjects: An epidemic of grippe prevails in the Port of New Orleans.

You shall not come in. It may say this to one British subject and allow 99 others to enter. It may create, at will, occasions for the exclusion of all British subjects, whatsoever, and have no such occasion when the entrance of French subjects is at issue. It may select any person or any steamship or railway line for ruin and any other for enrichment. There is not a conceivable right that may not be infringed, invaded or destroyed by such a power. It is not enough to say that the evil use of the power granted is improbable. No one is bound to trust that an illegal power will be legally and moderately used. **Gloucester Ferry Co. vs. Penn., 114 U. S. 205; Henderson vs. Mayor, 92 U. S. 268.** Power granted must be presumed to be granted for use, and what instance can be pointed to where arbitrary power was slow to exert itself? The history of civil liberty is the history of mankind's attempts to so limit and define power by written laws, charters, and constitutions, that every man may know what rights he has and what duties he owes. If arbitrary power be given, it is not law, for "law is the definition and limitation of power" (**Mr. Justice Matthews, in Yick Wo vs. Hopkins, 118 U. S., at page 370**); and if the power so given be exercised, there is no due process of law, neither is there equal protection of the laws afforded, for there can be no equality of operation in a law which furnishes no rule of action save such as may reside in the will of the individual charged with its execution.

If the "necessary tendency and ultimate actual operation" of the statute here attacked be such as we have argued, no citation, or certainly no extended citation, of authority can be necessary to demonstrate its entire in-

validity. The case at bar cannot be distinguished from the cases of **Chy Lung vs. Freeman, 92 U. S. 277, and Henderson vs. Mayor, 92 U. S. 259.**

We, therefore, submit that that portion of the statute under which the defendants in error acted is void on its face, and is void as construed by the Supreme Court of Louisiana; and that, as applied by the defendants in error, it has subjected the plaintiff in error to an arbitrary taking, and invasion of its rights, and an oppressive discrimination, and has deprived it of the rights secured to it by the 14th Article of Amendment.

VI.

THIRD POINT.

The statute as applied and construed is void, for the reason that it is in conflict with treaties between the United States on the one part and the Republic of France and the Kingdom of Italy on the other parts, guaranteeing certain rights, privileges and immunities to the citizens and subjects of said countries.

Article VIII of the treaty between the United States and France, concluded April 30, 1803 (see "Official Compilations of Treaties in Force, 1899," page 177), whereby the Territory of Louisiana was ceded to the United States, provides:

"In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nation in the ports above mentioned" (that is to say, the ports in the ceded territory, including the port of New Orleans).

Articles I, II, III and IV of the treaty of commerce and navigation between the United States and the Kingdom of

Italy, concluded February 26, 1871 (Off. Comp., pages 310, 311), provide as follows:

"Article I. There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation.

"Italian citizens in the United States and citizens of the United States in Italy shall mutually have liberty to enter with their ships and cargoes all the ports of the United States and Italy respectively which may be open to foreign commerce.

"They shall also have liberty to sojourn and reside in all ports whatsoever of said Territories. They shall enjoy respectively within the States and possessions of either party the same rights, privileges, favors, immunities and exemptions for their commerce and navigation as the natives of the country wherein they reside without paying other or higher duties or charges than are paid by the natives on condition of their submitting to the laws and ordinances there prevailing.

"War vessels of the two countries shall receive in their respective ports the treatment of those of the most favored nation.

"Article II. The citizens of each of the high contracting parties shall have liberty to travel in the States and Territories of the other; to carry on trade, wholesale and retail; to hire and occupy houses and warehouses; to employ agents of their choice; and generally to do anything incident to or necessary for trade upon the same terms as the natives of the country submit themselves to the laws there established.

"Article III. The citizens of each of the high contracting parties shall receive in the States and Territories of the other the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are, or shall be, granted to the natives upon their submitting themselves to the conditions imposed upon the natives.

"They shall, however, be exempt in their respective Ter-

ritories from compulsory military service, either on land or sea, in the regular forces or in the national guard or in the militia.

"They shall likewise be exempt from any judicial or municipal office, and from any contribution whatever, in kind or in money, to be levied in compensation for personal service.

"Article IV. The citizens of neither of the contracting parties shall be liable in the States and Territories of the other to any embargo; nor shall they be detained with their vessels, cargoes, merchandise, or effects for any military expedition nor for any public or private purpose whatever, without allowing to those interested a sufficient indemnification previously agreed upon when possible."

Article I of the treaty of commerce and navigation between the United States and Great Britain, concluded July 3, 1815 (Off. Comp., page 216), provides as follows:

"Article 1. There shall be between the Territories of the United States of America and all the Territories of her Britannick Majesty in Europe a reciprocal liberty of commerce. The inhabitants of the two countries respectively shall have liberty freely and securely to come with their ships and cargoes to all such places, ports and rivers in the Territories aforesaid in which other persons are permitted to come; to enter the same and to remain and reside in any port of said Territories respectively; also to hire and occupy houses and warehouses for the purposes of their commerce, and generally the merchants and traders of each nation respectively shall enjoy the most complete protection and security for their commerce; but subject always to the laws and statutes of the two countries respectively."

The treaty of commerce and navigation between the Kingdom of Greece and the United States, concluded Dec. 22, 1837 (Off. Comp. p. 268), provides for reciprocal freedom of trade and intercourse, and the Article XV (p. 273) provides as follows:

"Article XV. It is agreed that vessels arriving directly from the United States of America at a port within the dominion of His Majesty the King of Greece, or from the Kingdom of Greece at a port of the United States of America, and provided with a bill of health granted by an officer having competent power to that effect at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived, after which said vessels shall be allowed immediately to enter and unload their cargoes—Provided always that there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious disease; that such vessel shall not, during the passage, have communicated with any vessel liable itself to undergo quarantine; and that the country whence they came shall not at that time be so far infected or suspected that, before their arrival, an ordinance had been issued in consequence of which all vessels coming from that country should be considered as suspected and consequently subject to quarantine."

Article XVI of the treaty of commerce and navigation between the Kingdom of Sweden and Norway and the United States, concluded July 4, 1827 (Off. Comp. 616), contains a provision couched in exactly similar language.

The treaties above quoted are in no proper sense reciprocity treaties, and as the treaty with France quoted above contains the most favored nation clause, each and every one of the stipulations quoted above from the treaties of the United States with Italy, Great Britain, Greece, and Sweden-Norway become a part of the treaty between the United States and the Republic of France, and the citizens of France are entitled to all the privileges and immunities

thereby granted to the same extent as though same were specifically granted in terms by the French treaty.

The right was thus conferred, under the circumstances mentioned in the treaties with Greece and with Sweden-Norway, upon French citizens to come with their vessels to any port in the United States and to discharge the same "with no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessels shall have arrived." The benefit of these treaty stipulations to the orderly and expeditious transaction of commercial affairs, without, however, adding to the risk to the public health, is so evident that it was but natural that Congress should have enacted general legislation along the same lines. And, in fact, it might justly be said that the legislation of Congress, to which we are about to refer, was but legislation to make effective the treaty obligations assumed by the United States in its conventions, for by reason of the fact that most, if not all, of the treaties of this country contain the most favored nation clause, the stipulations in the treaties with Greece and Sweden-Norway became of universal application in the relations of the United States with other nations.

Thus we find that by an Act approved February 15, 1893 (27 Statutes at Large, 449), entitled "An Act granting additional quarantine powers and imposing additional duties upon the Marine Hospital Service," it is by the first section declared unlawful for any merchant ship, or other vessel, from any foreign port or place to enter any port of the United States, except in accordance with the provisions of that act and with such rules and regulations of State and

municipal health authorities as may be made in pursuance of or consistent with that act.

By section 2 of that act it is provided "that any vessel, at any foreign port, clearing for any port or place in the United States, shall be required to obtain from the consul, vice-consul, or other consular officer of the United States, at the port of departure, or from the medical officer where such officer has been detailed by the President for that purpose, a bill of health in duplicate in the form prescribed by the Secretary of the Treasury, setting forth the sanitary history and condition of the vessel and that it has in all respects complied with the rules and regulations in such cases prescribed for securing the best sanitary condition of said vessel with its cargo, passengers, and crew; and said consular or medical officer is required before granting such duplicate bill of health to be satisfied that the matters and things therein stated are true. * * *"

Heavy penalties are imposed by the same section upon any vessel sailing for the United States without this consular bill of health.

By Section 5 it is provided, "* * * and it shall not be lawful for any vessel to enter said port to discharge its cargo or land its passengers except upon a certificate of the health officer at such quarantine station certifying that said rules and regulations have in all respects been observed and complied with as well on his part as on the part of said vessel and its master in respect to the same and to its cargo, passengers and crew; and the master of every such vessel shall produce and deliver to the Collector of Customs at said port of entry, together with the other papers of the vessel, the said bills of health required to be obtained at the port of departure and the certificate herein required to be obtained from the health officer at the port of entry; and that the bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular officer or other officer of the United States over his aforesaid signature and seal shall be

accepted as evidence of the statement therein contained in any court of the United States."

Pursuant to the directions of this statute, the Secretary of the Treasury has made elaborate rules and regulations covering the inspection of all vessels with cargo and passengers clearing at a foreign port for a port in the United States; providing for complete reports by consular officers concerning the health of the port from which the vessel is about to sail, the condition of crew, passengers, etc., and prescribing minute regulations for the preservation of the good sanitary condition of the ship and cargo and health of the crew and passengers while at sea. We append to this brief the regulations of the Treasury Department covering the bills of health which such vessels must obtain from the consular agents before sailing, as Appendix "C."

In addition to these regulations, when any of the passengers of the ship are immigrants, by Section 2 of Act approved March 3, 1893, entitled "An act to facilitate the enforcement of the immigration and contract labor laws of the United States" (27 Statutes at Large, 569), it is provided that the immigrants shall be listed in convenient groups and no one list or manifest shall contain more than thirty names. To each immigrant or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list, and his number on the list for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath or affirmation of the master or commanding officer, or of the officer first or second below him in command, taken before the United States Consul or Consular Agent at the

port of departure before the sailing of the vessel, to the effect that he has made a personal examination of each and all of the passengers named therein, and that he has caused the surgeon of said vessel sailing therewith to make a physical examination of each of said passengers, and that from his personal inspection, and the report of said surgeon, he believes that no one of said passengers is an idiot or insane person, or a pauper, or likely to become a public charge, or suffering from a loathsome or dangerous contagious disease, or a person who has been convicted of felony, or of infamous crime or misdemeanor involving moral turpitude, or under a contract or agreement, express or implied, to perform labor in the United States; and that also, according to the best of his knowledge and belief, the information in said list or manifest concerning each of said passengers named therein is correct and true.

The third Section of the same act provides that the surgeon sailing with the vessel shall also sign and make oath to said lists or manifests, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each passenger on said lists, and that, according to the best of his knowledge and belief, the statements contained therein are true.

It is plain from an examination of these provisions that a compliance with the requirements of this legislation and the regulations of the Treasury Department made in pursuance thereof satisfies the conditions expressed in the treaties above referred to with Greece and Sweden-Norway and entitles the ship owner to enter and discharge his ship without any other quarantine or detention than such as

may be necessary to permit the health officer to make an examination.

The plaintiff in error specifically alleges in its supplemental and amended petition (Trans. pages 6 and 7) compliance with these laws and regulations, and was, therefore, entitled, after its vessel, cargo, crew and passengers had been inspected by the health officers of the defendant Board and found free of infectious or contagious diseases, to proceed to New Orleans and there discharge her cargo and passengers; and in excluding the Britannia after such inspection had disclosed compliance with said laws and regulations, after the health officer at the Quarantine Station had given her a clean bill of health, the defendants in error deprived the plaintiff in error of privileges and immunities secured to it by and under the treaty with France.

It follows, then, that as the Constitution, and the laws and treaties made in pursuance thereof, are the supreme law of the land, this statute which the Supreme Court of Louisiana holds is a valid exercise of legislative power and vests the State Board of Health with authority to act as they did in this case, must be void, unless for some reason the treaty-making power of the Government exceeded its limitations.

We cannot conceive, however, in what respect it has done so in concluding the treaties referred to above. The power to make treaties is conferred by the Constitution upon the general Government without any express limitations or restrictions whatever. Impliedly, however, it is restricted to securing those objects for which the Government and the Constitution were created, and it cannot be

exercised so as to destroy any of the powers otherwise granted or secured by that instrument.

It might not be so exercised, perhaps, as to deprive the several States of the right of preserving the health and morals of its citizens by excluding convicted felons, paupers, and diseased persons and things from their borders, but beyond this exception in relation to the ingress and egress and the status of foreigners in this country, we know of no limitation upon the treaty-making power conferred by the Constitution.

Mr. Justice Field, in the case of **Ho Ah Kow vs. Nunan, 5 Sawyer, 552,** had occasion to pass upon the validity of certain articles of the Constitution of California and statutes made in pursuance thereof having as their object the exclusion of Chinese. In passing upon the validity of these statutes and in discussing the extent and scope of the treaty-making power, the learned Justice said:

"To that government belongs exclusively the treaty-making power, and the power to regulate commerce with foreign nations, which includes intercourse as well as traffic, and with the exceptions presently mentioned, the power to prescribe the conditions of immigration or importation of persons. The State in these particulars, with those exceptions, is powerless, and nothing is gained by the attempted assertion of a control which can never be admitted. The State may exclude from its limits paupers, and convicts of other countries, persons incurably diseased, and others likely to become a burden upon its resources. It may, perhaps, also exclude persons whose presence would be dangerous to its established government. Whatever is done by way of exclusion beyond this must come from the general Government. That Government alone can determine what aliens shall be permitted to land within the

United States, and upon what conditions they shall be permitted to remain. * * *"

See Baker vs. Portland, 5 Sawy. 566.

In re Parrott, 1 Fed. 481, by Sawyer & Hoffman, J. J.

Nishi Mura vs. United Slates, 142 U. S. 651.

Head Money Cases, 112 U. S. 580.

In re Ah Fong, 3 Sawyer, 144 (Justice Field).

Under the Constitution of the United States, no State has a right to enter into any treaty or convention with any foreign nation, and the power to make treaties and to hold relations with foreign nations is exclusively vested in the Federal Government. As the right of visitation and intercourse by foreigners with this country is within the jurisdiction of the treaty-making power, it follows that the power to fix the conditions upon which foreigners may visit or reside in the United States is vested in the Federal Government; and it follows that whenever the Federal Government in the exercise of its treaty-making power has entered into a convention with any foreign nation fixing the status of the subjects of such nation in the United States and regulating the conditions when and under which they may enter the United States, such treaty becomes obligatory upon all of the States, and it is not within the power of any of them to deny such persons the rights and privileges which such treaty confers upon them. The only limitation we believe to which such rights and privileges so conferred might be subject is the power of the State to protect itself against criminals, paupers, and diseased persons, though it may even be doubted whether the recognized police power of the State could even in such a case prevail. But in this case, it is not necessary to consider

the result of such a conflict, as admittedly, these persons were not of the character mentioned, nor were in their nature any more dangerous to the health and safety of the community than any other class of people. The order and the law excluding them would have applied equally as well to a body of the healthiest and most respectable citizens of any State of the Union or of any foreign nation. It would have applied to any foreign ambassador and his official and personal suite, or to a visiting prince or sovereign just as clearly as to these immigrants.

To permit the exercise of such a power by the State of Louisiana would be to authorize it to nullify every treaty of commerce and navigation made by the general government; to involve it in difficulties which might lead to war or to the suspension of intercourse with foreign nations; and would authorize it to pass laws whose enforcement would render the general government liable to just reclamations which it must answer, while the State, for whose acts it was thus so responsible, would not suffer in any respect whatsoever.

The fulfilment of the most sacred treaty obligations of this government to the nations of the world would be subject to the discretion and judgment of three physicians, a quorum of this Board. Such an assertion of power can never be admitted.

VII.

FOURTH POINT.

This Statute as applied is void for the reason that it is in conflict with the laws of the United States relating to foreign immigration into the United States.

By Acts approved March 3, 1875, Chap. 141; August 3,

1882, Chap. 376; June 26, 1884, Chap. 121; Feb. 26. 1885, Chap. 164; March 23, 1887, Chap. 120; and March 3, 1891, Chap. 551; and the regulations of the Treasury Department made in pursuance thereof, the national government has minutely provided the terms and conditions upon which, and regulated the manner in which, immigrants may enter the United States, and this legislation fully covers the entire field of the subject confided exclusively to the national government. By the Act approved March 3, 1891, Congress has provided for the exclusion of all paupers, criminals, and diseased or afflicted persons, or others who would probably prove undesirable citizens, from the United States, and from the fact that it imposes no restrictions on persons not of such character, but, on the contrary, by naturalization laws, has actually encouraged them to enter the United States and become citizens, it is perfectly manifest that it is the desire of the national government that such persons should freely and unrestrictedly enter the country; and we submit that any legislation by a State which vests any Board with power to exclude such persons as the immigrants brought to the port of New Orleans by the Steamship Britannia, was and is in contravention of these Statutes.

VIII.

In conclusion, we submit that the section of the act complained of is unconstitutional; it is not a law; it confers no rights; it imposes no duty; it affords no protection; it is, in legal contemplation, as inoperative as though it had never been passed.

Norton vs. Shelby Co., 118 U. S. 425 at 442.

The case stands, in such event, as if the members of the Board had acted without sanction of law, and they must respond for the damages occasioned by their illegal acts.

Beer vs. Board of Health et als., 35 La. An. 1132.

Whatever may be the effect of a judgment against the Board, which is an agency created by the State, with power to sue and be sued, a judgment is enforceable by the ordinary process against the individuals comprising it, who wronged the plaintiff in error. As an injunction, as well as damages, was asked for, the Board was a necessary party to the suit.

We submit there was error in the judgment below, and the decree of the Supreme Court of Louisiana should be reversed, with directions to reverse the judgment of the Civil District Court for the Parish of Orleans, Division C, and to overrule the exception of no cause of action filed by the defendants, and remand the case for further proceedings.

W. W. HOWE,
W. B. SPENCER,
Of Counsel for Plaintiff in Error.

APPENDIX.

"A"

Extract from Act 192 of 1898 of the General Assembly of Louisiana.

SECTION 8. Be it further enacted, etc., That in the event that any case shall be reported to, or come to the knowledge of any local board, which is either deemed to be a case of contagious or infectious disease, or suspected of so being, the local board shall immediately isolate the same and communicate the fact by the most expeditious means at hand to the State Board of Health, together with the information as to what steps have been taken by the local board to isolate and care for the same, and shall from time to time communicate the progress of the case and disease to the State Board of Health. On receipt of such information by the said State Board of Health, the President of said Board shall, if he deem the emergency sufficient and necessary, send expert physicians to be selected by him to examine and diagnose the disease, and if on such examination and diagnosis the experts shall declare the case to be one of obnoxious or infectious nature, liable to spread, or to become dangerous to the general public health of the State, the State Board of Health or its President shall instruct the health officer of the Board of Health of the parish, city or town, as to what additional steps, if any, shall be taken to isolate the case, and prevent the spread of the contagion or infection therefrom and shall require that the local health officers shall immediately conform thereto, and put the same in operation. In the event that said local authorities shall fail to do so in a manner satisfactory to the State Board or its President, the State Board or its President shall take charge of the case and manage the same, through its own officers or employes.

All expenses, costs and charges incurred in the management, control and supervision in such cases shall be borne and paid by the parish, town or city in which the case may be, and on the failure of the parish or municipality to reimburse the State Board the amount of its expenditures incurred in such cases, the State Board of Health shall have the right to proceed by writ of mandamus in any court of competent jurisdiction to compel the payment of the same.

In case that any parish, town or city, or any portion thereof, shall become infected with any contagious or infectious disease, to such an extent as to threaten the spread of such disease to the other portions of the State, the State Board of Health shall issue its proclamation declaring the facts and ordering it in quarantine, and shall order the local boards of health in other parishes, town and cities, to quarantine against said locality, and shall establish and promulgate the rules and regulations, terms and conditions on which intercourse with said infected locality shall be permitted, and shall issue to the other local sanitary authorities instructions as to the measures adopted in quarantining against persons, goods, or other property coming from said infected localities, and these rules and regulations, terms and conditions shall be observed and obeyed by all other health authorities, provided that should any other of the non-infected portion of the State desire to add to the regulations and rules, terms and conditions already imposed by the State Board, they do so, on approval of the State Board of Health. **The State Board of Health may, in its discretion, prohibit the introduction into any infected portion of the State, persons acclimated, unacclimated or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease.** The State Board of Health shall render to the local boards of health all the assistance in their power and which the condition of their finances will permit.

"B"

Act No. 149 of the General Assembly of Louisiana for 1890.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be the duty of all corporations, domiciled out of the State, doing business in the State, excepting mercantile corporations, to file in the office of the Secretary of State a declaration of the place or locality of its domicile, together with the name of its agent or officer in the State representing said corporation upon whom service of process can be made.

SECTION 2. Be it further enacted, etc., Whenever any such corporation shall do any business of any nature whatsoever in this State, without having complied with the requirements of section one of this act, it may be sued upon any cause of action in the parish where the right or cause of action arose, and service of process may be made upon the person or persons, firm or company, acting or transacting such business for such corporation, and each person or persons, company or firm shall be deemed the agent of said corporation upon whom service can be made.

"C"

Quarantine Regulations to be Observed at Foreign Ports and at Sea.

ARTICLE I.—BILLS OF HEALTH.

PAR. 1. Masters of vessels departing from any foreign port for a port in the United States must obtain a bill of health in duplicate signed by the proper officer or officers of the United States as provided for by law, except as provided for in par. 5.

The following form is prescribed:

PAR. 2. Bill of health:

Form No. 1931*a*.

UNITED STATES BILL OF HEALTH.

Name of vessel, ——. Nationality, ——. Rig, ——. Master, ——. Tonnage, gross; net, ——. Iron or wood. Number of compartments for cargo, ——; for steerage passengers, ——; for crew, ——.

Name of medical officer, ——.

Number of officers, ——.

Number of members of officers' families, ——.

Number of crew, including petty officers, ——.

Number of passengers, cabin, ——.

Number of passengers, steerage, ——.

Number of persons on board, all told, ——.

Port of departure, ——.

Where last from, ——.

Number of cases of sickness and character, during last voyage, ——.

Vessel engaged in —— trade, and plies between —— and ——.

Sanitary condition of vessel ——.

Nature, sanitary history, and condition of cargo, ——.

Source and wholesomeness of water supply, ——.

Source and wholesomeness of food supply, ——.

Sanitary history and health of officers and crew, ——.

Sanitary history and health of passengers, cabin, ——.

Sanitary history and health of passengers, steerage, ——.

Sanitary history and condition of their effects, ——.

Prevailing diseases at port and vicinity, ——.

Location of vessel while discharging and loading—open bay or wharf, ——.

Number of cases and deaths from the following-named diseases during the past two weeks:

Disease.	No. of cases.	No. of deaths.
Yellow fever	——	——
Asiatic cholera	——	——
Cholera nostras or cholerine	——	——
Smallpox	——	——
Typhus fever	——	——
Plague	——	——
Leprosy	——	——

Number of cases of sickness and character of same while vessel was in this port. —— ——.

Any conditions affecting the public health existing in the port of departure or vicinity to be here stated, ——.

I certify that the vessel has complied with the rules and regulations made under the Act of February 15, 1893, and that the vessel leaves this port bound —— for ——, U. S. of America, via ——.

Given under my hand and seal this ——day of ——, 190

(Signature of consular officer) ——— ———,

——— ———.

PAR. 3. Vessels clearing from a foreign port for any port in the United States, and entering or calling at intermediate ports, must procure at all said ports a supplemental bill of health as provided in Article 1. If a quarantinable disease has appeared on board the vessel after leaving the original port of departure, or other circumstances presumably render the vessel infected, the supplemental bill of health should be withheld until such sanitary measures have been taken as are necessary.

The following form is prescribed:

PAR. 4.—

SUPPLEMENTAL BILL OF HEALTH.

PORT OF———.

Vessel ——, bound from —— to ——, U. S. A.

Sanitary condition of port, ——.

State diseases prevailing at port and in surrounding country, ——.

Number of cases and the deaths from the following-named diseases during the past two weeks:

Diseases.	No. of cases.	No. of deaths.	Remarks. (Any condition affecting the public health existing in the port to be stated here.)
Yellow fever	.....	.....	
Asiatic cholera or cholerine	.....	.....	
Smallpox	.....	.....	
Typhus fever	.....	.....	
Plague	.....	.....	
Leprosy	.....	.....	

Number and sanitary condition of passengers and crew landed at this port.

Cabin, No.—. Sanitary condition and history, ——.
Steerage, No.—. Sanitary condition and history, ——.
Crew, No.—. Sanitary condition and history, ——.
Sanitary condition of effects, ——.
NOTE.—If disembarked on account of sickness state disease, ——.

Number and sanitary condition of passengers and crew taken on at this port, and sanitary condition of effects.

Cabin, No.—. Sanitary condition and history, ——.
Steerage, No.—. Sanitary condition and history, ——.
Crew, No.—. Sanitary condition and history, ——.
Sanitary condition of effects, ——.

Sanitary history of vessel since leaving last port.

(Cancel Form A, B, or C, as the case requires.)

Form.

A.—To the best of my knowledge and belief—

(Form A will be used at intermediate ports where the vessel does not enter and clear.)

B.—I have satisfied myself that—

(Form B will be used at intermediate ports where the vessel enters and clears.)

} no quarantinable disease has appeared aboard since leaving ——.

C.—Since leaving —— the following quarantinable disease has appeared on board ——, and I certify that the necessary sanitary measures have been taken.

I certify also that with reference to the passengers, effects, and cargo taken on at this port, the vessel has complied with the rules and regulations made under the Act of February 15, 1893.

Given under my hand and seal this ——day of —— 190

(Signature of consular officer) ——— ———,

——— ———.

PAR. 5. Under the Act of Congress approved August 18, 1894, vessels plying between Canadian ports on the St. Croix River, the St. Lawrence River, the Niagara River, the Detroit River, the St. Clair River, and the St. Marys River, and adjacent ports of the United States on the same waters; also vessels plying between Canadian ports on the following-named lakes, viz., Ontario, Erie, St. Clair, Huron, Superior, Rainy Lake, Lake of the Woods, Lake Champlain, and ports in the United States; also vessels plying between Mexican ports on the Rio Grande River and adjacent ports in the United States, are exempt from the provision of section 2 of the act granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service, approved February 15, 1893, which requires vessels clearing from a foreign port for a port in the United States to obtain from the consular officer a bill of health.

During the prevalence of any of the quarantinablo diseases at the foreign port of departure, vessels above referred to are hereby required to obtain from the consular officer of the United States, or from the medical officer of the United States, when such officer has been detailed by the President for this purpose, a bill of health, in duplicate, in the form prescribed by the Secretary of the Treasury, Quarantine Regulations of the United States, 1894.

ARTICLE II.—INSPECTION.

PAR. 1. The officer issuing the bill of health will satisfy himself, by inspection if necessary, that the conditions certified to therein are true.

PAR. 2. Inspection is required of—

(*a*) All vessels from ports at which cholera prevails, or at which yellow fever, smallpox, or typhus fever prevails in epidemic form.

(*b*) All vessels carrying steerage passengers.

But the inspection of this class may be limited to said

passengers and their living apartments, if from a healthy port.

PAR. 3. Inspection of the vessel is such an examination of the vessel, cargo, passengers, crew, personal effects of same, and including examination of manifests and other papers, food, and water supply, as will enable him to determine if these regulations have been complied with.

PAR. 4. When an inspection is required, it should be made by daylight, as late as practicable before sailing. The vessel should be inspected before the passengers go aboard, the passengers just before embarkation, and the crew on deck; and no cargo or person should be allowed to come aboard after such inspection except by permission of the officer issuing the bill of health.

ARTICLE III.—REQUIREMENTS WITH REGARD TO VESSELS.

PAR. 1. Vessels, prior to stowing cargo or receiving passengers, shall be mechanically clean in all parts, especially the hold, forecastle, and steerage; the bilges and limbers free from odor and deposit. The air streaks should be sufficient in number and open for ventilation. Disinfection of the vessel may be required by the medical officer of the United States.

PAR. 2. If any infectious disease has occurred during the last voyage, the portions of the vessel liable to have been infected should be disinfected. When required, this should be done by one of the methods hereinafter described.

PAR. 3. The air space and ventilation must comform to the provisions of the Act of Congress approved August 2, 1882, entitled "An act to regulate the carriage of passengers by sea." *

PAR. 4. The food and water supply should be sufficient, and water for drinking purposes, free from possibility of pollution, should be easily accessible.

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*Computation of air space in any steerage compartment must not include the space taken up by bunks, mattresses, life-preservers, or personal effects.

PAR. 5. Vessels departing from a port where cholera prevails should have two medical officers if more than 250 steerage passengers are carried.

PAR. 6. All bedding provided for steerage passengers must be destroyed or disinfected before being again used or landed, and mattresses and pillows used by steerage passengers shall not be landed.

PAR. 7. The hospitals of vessels carrying steerage passengers should be located on the upper or second deck and not in direct communication with any steerage compartment.

PAR. 8. Excepting when absolutely required, no solid partitions should be placed in any steerege compartment, obstructing light and air.

ARTICLE IV.—CARGO.

PAR. 1. At ports infected with cholera, earth, sand, loam, soft or porous rock, should not be taken as ballast. Nor at ports infected with yellow fever should such ballast be allowed on board vessels clearing for ports south of the southern boundary of Maryland when better material, such as hard rock, is obtainable, or when it is possible to use water ballast.

PAR. 2. Certain food products, viz., unsalted meats, sausages, dressed poultry, dried and smoked meats, rennets, fresh butter, fresh milk (unsterilized), fresh cheese, fresh bread, fresh vegetables, coming from cholera-infected localities or through such localities, if exposed to infection therein, should not be shipped.

PAR. 3. Fresh fruits from districts where cholera prevails shall be shipped only under such sanitary supervision as will enable the inspector to certify that they have not been exposed to infection.

PAR. 4. Articles of merchandise, personal effects, and bedding, coming from a district known to be infected, or as to the origin of which no positive evidence can be

obtained, and which the consular or medical officer has reason to believe are infected, should be subjected to disinfection prior to shipment by processes prescribed for articles according to their class.

PAR. 5. New merchandise in general may be accepted for shipment without question; and articles of new merchandise, textile fabrics, and the like, which have been packed or prepared for shipment in an infected port or place, with a special view to protect the same from moisture incident to the voyage, may be accepted and exempted from disinfection.

PAR. 6. All rags and all textile fabrics used in the manufacture of paper, collected or packed in any foreign port or place, must, prior to shipment to the United States, be subjected to disinfection by one of the prescribed methods.

(Old jute bags, old cotton bags, old rope, new cotton and linen cuttings from factories, not included).

PAR. 7. Rags, old jute, old gunny, old rope, and similar articles. gathered or packed or handled in any port or place where cholera or yellow fever prevails, or smallpox or typhus fever prevails in epidemic form, should not be shipped until the officer issuing the bill of health should be satisfied that the port or place has been for thirty days free from such infection, and after the disinfection of the articles.

PAR. 8. New feathers for bedding; human and other hair, unmanufactured; bristles; wool; hides not chemically cured, coming from a district where cholera prevails, shall be refused shipment until thirty days have elapsed since last exposure, unless unpacked and disinfected as hereinafter provided.

Feathers which have been used should be disinfected, and invariably by steam.

PAR. 9. The articles enumerated in the preceding paragraph coming from a district where yellow fever prevails,

destined for ports or places south of the southern boundary of Maryland during the quarantine season, or where smallpox or typhus fever prevails in epidemic form, should be refused shipment unless disinfected as hereinafter provided.

PAR. 10. Articles such as gelatin, glue, glue-stock, fish glue, fish bladders, fish skins, sausage casings, bladders, dried blood, having been in any way liable to infection in the process of preparation, gathering, or shipment, should be disinfected.

PAR. 11. Any covering, shipped from or through an infected port or place, and which the consul or medical officer has reason to believe infected, should be disinfected.

PAR. 12. Any article presumably infected, which can not be disinfected, should not be shipped.*

ARTICLE V.—PASSENGERS AND CREW.

PAR. 1. Passengers, for the purposes of these regulations, are divided into two classes, cabin and steerage.

PAR. 2. No person suffering from a quarantinable disease, or scarlet fever, measles, or diphtheria, should be allowed to ship.

PAR. 3. Steerage passengers and crew, coming from districts where smallpox prevails in epidemic form, or who have been exposed to smallpox, shall be vaccinated before embarkation, unless they show evidence of immunity to smallpox by previous attack or recent successful vaccination.

PAR. 4. Steerage passengers and crew who, in the opinion of the inspecting officer, have been exposed to the infection of typhus fever, should not be allowed to embark for a period of at least fourteen days after such exposure and the disinfection of their baggage.

PAR. 5. When practicable, passengers should not ship from an infected port. Steerage passengers coming from

*Upholstered furniture, sheepskins used as wearing apparel, bedding, bones, horns and hoofs.

cholera-infected districts must be detained five days in suitable houses or barracks located where there is no danger from infection, and all baggage disinfected as hereinafter provided; the said period of five days to begin only after the bathing of the passengers, disinfection of all their baggage and apparel, removal of all food brought with them, and isolation from others not so treated.

PAR. 6. Steerage passengers from districts not infected with cholera, shipping at a port infected with cholera, unless passed through without danger of infection and no communication allowed between passengers and the infected locality, should be treated as those in the last paragraph.

PAR. 7. Prior to sailing from ports infected with cholera, each passenger of the cabin class should produce satisfactory evidence as to his exact place of abode during the five days immediately preceding embarkation, and if it appears that he or his baggage has been exposed to contagion, such passenger should be detained such length of time as shall be deemed necessary by the inspecting officer, and the baggage should be disinfected.

PAR. 8. The rules prescribed for the disinfection of the baggage and personal effects of passengers and crew coming from cholera-infected ports should also be observed with regard to passengers and crew coming from ports and places where plague, yellow fever, typhus fever, or smallpox is prevailing in an epidemic form.

PAR. 9. Should cholera break out in the barracks or houses in which the passengers are undergoing the five days' observation, no passenger from said house or barracks should embark until five days' isolation from the last case and a repetition of the sanitary measures previously taken.

PAR. 10. All baggage of steerage passengers destined for the United States shall be labeled. If the baggage has been inspected and passed, the label shall be a red label bearing the name of the port, the steamship on which the

baggage is to be carried, the word "*inspected*" in large type, the date of inspection, and the seal or stamp of the consular or medical officer of the United States. All baggage that has been disinfected shall bear a yellow label, upon which shall be printed the name of the port, the steamship upon which the baggage is to be carried, the word "*disinfected*" in large type, the date of disinfection, and the seal or stamp of the consular or medical officer of the United States. It is understood, and it will be so printed on the blank, that the label is not valid unless bearing the consular or medical officer's stamp or seal.

PAR. 11. Each steerage passenger should be furnished with an inspection card (see form below). This card, stamped by the consular or medical officer, is to be issued to every member of a family, as well as to the head thereof.

INSPECTION CARD.

[Immigrants and steerage passengers.]

Port of departure ..... *Date of departure,*

Name of ship..... .....

Name of immigrant..... *Last permanent residence*.....

Inspected and passed at	Passed at quarantine, port of ....., United States	Passed by Immigration Bureau, port of.....
[Seal or stamp of consular medical officer.]	..... [Date.]	..... [Date.]

[The following to be filled in by ship's surgeon or agent prior to or after embarkation.]

Ship's list or manifest..... *No. on ship's list or manifest*.....

Berth No.	Steamship inspection.	1st day.	2	3	4	5	6	7	8	9	10	11	12	13	14	To be punched by ship's surgeon at daily inspection.

VACCINATED.

[Signature or stamp.]

[Reverse Side.]

Keep this Card to avoid detention at Quarantine and on Railroads in the United States.

Diese Karte muss aufbewahrt werden, um Aufenthalt an der Quarantäne, sowie auf den Eisenbahnen der Vereinigten Staaten zu vermeiden.

Cette carte doit être conservée pour éviter une détention à la Quarantaine, ainsi que sur les chemins de fer des États-Unis.

Deze kaart moet bewaard worden, ten einde oponthoud aan de Quarantijn, alsook op de ijzeren wegen der Vereenigde Staten te vermijden.

Conservate questo biglietto ande evitare detenzione alla Quarantina e sulle Ferrovie degli Stati Uniti.

Tento lístek musíte uschovati, nechcete-li ukarantény (zastavení ohlednê zjistêni zdraví) neb na dráze ve spojenych státech zdrzení byti.

Tuto kartocku treba trímat' u sebe aby sa predeslo zderzovanu v karantene aj na zeleznici ve Spojenych Státoch.

Par. 13. Cabin passengers from cholera-infected ports or places should be given a special inspection card, on which shall be printed the port of departure, name of passenger, name of ship, date of departure, and an indicated

space for the seal or stamp of the consular or medical officer.

PAR. 14. The baggage of such cabin passengers shall be labeled in the same manner as steerage baggage.

PAR. 15. In a port where cholera prevails, or where yellow fever prevails in epidemic form, the crews of passenger ships should remain on board during their stay. Should additional men be shipped, the same precautions should be observed with them as in the case of steerage passengers. If it is considered necessary, the crews of freight ships may be similarly treated at the discretion of the medical officer.

PAR. 16. Passengers and crews, merchandise and baggage prior to shipment at non-infected port, but coming from an infected locality, should be subject to the same restrictions as are imposed in an infected port.

PAR. 17. American vessels bound for the United States, or for Porto Rico, or for Cuba, shall not ship men in ports of Cuba or Porto Rico where smallpox or yellow fever prevails, unless such men have been inspected and passed by the quarantine officer.

ARTICLE VI.—REQUIREMENTS AT SEA.

PAR. 1. The master of the vessel should cause the following rules (which comprise those recommended by the International Conference of Rome, 1885) to be observed during the voyage.

(*a*) The soiled body linen of passengers and crew suffering from infectious disease should be at once immersed in boiling water or in a disinfecting solution.

(*b*) The water-closets should be washed and disinfected twice a day.

(*c*) Rigorous cleanliness and free ventilation should be maintained during the voyage on board all ships.

PAR. 2. An inspection of the vessel, including the steerage, should be made by the ship's physician once each day.

PAR. 3. Should cholera (or cholerine), yellow fever, typhus fever, or smallpox appear on board a ship while at sea, those who first show symptoms of these diseases will be immediately sent to the hospital; the ship's physician will then immediately notify the captain, and all of the effects liable to convey infection which have been in use will be destroyed or disinfected.

PAR. 4. The compartments occupied by those who fall sick with infectious disease should be disinfected, and, as far as possible, the compartments thus disinfected should be freely exposed to the air. If the vessel is an iron steamer and the compartments suitable, the entire compartment should be disinfected by steam. The articles liable to convey infection should remain in the compartments during the disinfection. After disinfection of the compartments the bedding and clothing may be removed and dried.

PAR. 5. Patients with infectious disease should be isolated.

PAR. 6. The hospital should be disinfected as soon as it becomes vacant.

PAR. 7. The dead should be enveloped in a sheet saturated with one of the strong disinfecting solutions, without previous washing of the body, and at once placed in a coffin hermetically sealed or buried at sea.

PAR. 8. A clinical record should be kept on the prescribed form, by the ship's surgeon, of all cases of sickness on board, and delivered to the quarantine officer at the port of arrival.

PAR. 9. Under the foregoing paragraphs disinfecting solutions are limited to the following: Strong: acid solution of bichloride of mercury (1 to 500); a 1 to 20 solution of pure carbolic acid. Weak: acid solution of bichloride of mercury (1 to 1000); pure carbolic acid, 1 to 40.